

ORDINANCE NO. 855

AN ORDINANCE PROVIDING FOR THE GRANTING OF FRANCHISES FOR COMMUNITY ANIENNA TELEVISION SYSTEMS AND PROVIDING TERMS AND CONDITIONS FOR THE OPERATION OF SUCH COMMUNITY ANTENNA TELEVISION SYSTEMS AND FEES THEREFOR, WITHIN THE CITY OF LODI AND PRESCRIBING CERTAIN PENALTIES.

The City Council of the City of Lodi does ordain as follows:

SECTION 1. DEFINITIONS.

Unless otherwise indicated in this Ordinance, the following terms have the following meanings herein:

(a) "Council" means the City Council of the City of Lodi, State of California.

(b) "CATV" means a community antenna television system designed as a system of antenna, coaxial cables, wires, wave guides, and other conductors, equipment, or facilities designed, constructed, or used for the purpose of providing television or radio service by cable or through its facilities as herein contemplated. CATV shall not mean or include the submission of any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television" or "pay TV."

(c) "City" means the City of Lodi, State of California,

(d) "Franchise" means any non-exclusive authority granted pursuant to this Ordinance in terms of Franchise or otherwise to construct, operate, and maintain a CATV system in the incorporated area of the City.

(e) "Franchise Area" means all or any portion or portions of the incorporated area of the City of Lodi for which a Franchise has been granted hereunder.

(f) "Grantee" means the person to whom a Franchise under this Ordinance is granted by the Council and any lawful successor or assignee of such a person.

(g) **"Gross annual receipts"** means **any and all** compensation or receipts obtained from and as a result of the operation of a CATV system by a Grantee within the Franchised Area, except that said term shall not include receipts or compensation for: (1) the installation, reconnection or any other non-reoccurring charges; (2) the **amount** of any refunds, credits, or other payments made to subscribers or users; (3) any taxes on services furnished by the Grantee imposed directly or indirectly on any subscriber or user by any municipal corporation, political subdivision, state or other governmental unit and collected by the Grantee for the governmental unit; and (4) the sale or transfer of tangible property; (5) the sale or transfer of the Franchise; (6) the issuance, sale, or transfer of corporation stocks, bonds, or other securities; and (7) loans or gifts to the Grantee.

(h) **"Person"** means any person, firm, association, organization, partnership, business trust, joint venture, corporation, or company.

(i) **"Property of Grantee"** means any property constructed, installed, operated, or maintained by a Grantee under the authority of a non-exclusive Franchise issued pursuant to this Ordinance-

(j) **"Street"** means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, drive, public utility easement, or other public place as may be authorized by the Council, now or hereafter existing as such within the incorporated area of the City.

(k) **"Subscriber"** means any person or entity receiving for any purpose the CATV service of a Grantee.

SECTION 2. PROHIBITIONS.

No person shall extend, operate, or carry on the business of distributing to any persons in this City, any television signals or radio signals by means of a CATV system unless a Franchise therefor has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect. No person shall

construct, install, ~~or~~ maintain within any street in the City ~~or~~ within any other public property of the City ~~or~~ within any privately owned area within the City which has not yet become a public street but is designated ~~or~~ delineated as a ~~proposed~~ public street on any tentative subdivision map approved by the City, any equipment ~~or~~ facilities for distributing any television signals ~~or~~ radio signals through a CATV system, unless a Franchise authorizing such use ~~of~~ such street ~~or~~ property ~~or~~ area has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.

SECTION 3. FRANCHISE TO OPERATE.

A ~~non-exclusive~~ Franchise to construct, operate, and maintain a CATV system within any Franchise Area ~~may~~ be granted by the ~~Council~~ to any person, whether operating under an existing Franchise ~~or~~ not, offering to furnish and provide a system pursuant to the terms and provisions ~~of~~ this Ordinance. No provision of this Ordinance shall be construed ~~as~~ to require the granting of a Franchise when in the opinion of the Council it is in the public interest to restrict the number of grantees to one ~~or~~ more. Neither the granting ~~of~~ any non-exclusive Franchise hereunder nor any ~~of~~ the provisions contained herein shall be construed to prevent the City from granting any identical, ~~or~~ similar, ~~non-exclusive~~ Franchise to ~~any~~ person within all ~~or~~ any portion of the City.

SECTION 4. APPLICATION REQUIREMENTS.

An application ~~for~~ a Franchise hereunder shall be in writing and accompanied by a payment to the City ~~of TWO HUNDRED FIFTY DOLLARS AND NO/100 (\$250.00)~~ to reimburse City for expenses ~~incurred in~~ connection with processing and handling the application. An application shall contain the following information:

(a) The name and address of the applicant. If the applicant is a partnership, the name and address ~~of~~ each partner shall be set forth. If the appliaant is a corporation, the application shall state the names and addresses ~~of its~~ directors, main officers, major stockholders, and associates, and the names and addresses of ~~parent~~ and subsidiary companies.

(b) A statement and description of the CATV system ~~proposed~~ to be constructed, installed, maintained, ~~or~~ operated by the applicant,

(c) The proposed location of the CATV system and its various ~~wmponents~~.

(d) A description of the manner ~~in~~ which applicant proposes to construct, install, maintain, and operate the CATV system and the extent and manner in which existing ~~or~~ future poles ~~or~~ other public utilities will be used for the system.

(e) A description of the public streets, public places, and proposed public streets within which applicant proposes ~~or~~ seeks authority to construct, install ~~or~~ maintain ~~any~~ CATV equipment ~~or~~ facilities.

(f) A description of the equipment ~~or~~ facilities proposed to be constructed, installed ~~or~~ maintained therein and the proposed location thereof.

(g) A statement of the estimated costs of the installation of the proposed system described ~~in~~ subparagraphs(b) to (f) above,

(h) A statement that the CATV services shall be available to ~~all~~ areas of the incorporated limits ~~of~~ the City ~~of~~ Lodi as the said limits are established from time to time.

(i) A statement ~~or~~ schedule ~~in~~ a form approved by the City Manager ~~of~~ ~~proposed~~ rates and charges to subscribers for installation and services, and a copy of the proposed service agreement between the Grantee and its subscribers shall accompany the application.

(j) A statement setting forth all agreements and understandings, whether ~~written~~, oral, ~~or~~ implied existing between the applicant and ~~any~~ person ~~who~~ is a party ~~in~~ interest with respect to the proposed Franchise ~~or~~ the proposed CATV operation, ~~If~~ a Franchise is granted to a person posing ~~as~~ a front ~~or~~ as the representative of another person, and such information is not disclosed in the original application, such Franchise shall be deemed void and of no force and effect,

(k) A financial statement prepared by a certified public accountant or public accountant satisfactory to the Council, or another showing satisfactory to the Council, demonstrating applicants financial status and its financial ability to complete the construction and installation of the proposed CATV system.

(1) The Council may at any time demand, and applicant shall then provide, such supplementary, additional, or other information as the Council may deem reasonably necessary to determine whether the requested Franchise should be granted and the application may be amended with consent of the Council at any time prior to granting of the Franchise.

SECTION 5. APPROVAL OF APPLICATION.

Upon consideration of any application, the Council may refuse to grant the requested Franchise or the Council may by resolution grant a Franchise for a CATV system to any applicant as may appear from its application to be in the opinion of the Council best qualified to render good and efficient CATV service to subscribers in the proposed Franchise Area. The application submitted, together with any amendments, and this ordinance shall constitute and form part of the Franchise if granted.

SECTION 6. ACCEPTANCE OF FRANCHISE.

Within thirty (30) days after the date of a resolution awarding a Franchise, or within such extended period of time as the Council may authorize, the Grantee shall file with the City Manager his written acceptance in forms satisfactory to the City Attorney, of the Franchise, together with the required bond and insurance policies, and his agreement to be bound by and to comply with and to do all things required of him by the provisions of this Ordinance and the Franchise. Such acceptance and agreement shall be acknowledged by the Grantee before a notary public and shall be in form and content satisfactory to, and approved by, the City Attorney.

SECTION 7. FRANCHISE CONDITION.

Any Franchise granted pursuant to this Chapter shall include, among other things, the following condition:

The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by Ordinance of the City of Lodi and no other purpose whatsoever,

Inclusion of the foregoing statement in any such Franchise shall not be deemed to limit the authority of the City to include any other reasonable condition, limitation, or restriction which it may deem necessary to impose in connection with a Franchise granted pursuant to the authority conferred by this Ordinance.

SECTION 8. FRANCHISE RENEWAL

Unless renewed pursuant to the provisions of Section 10, any Franchise granted under this Ordinance is renewable upon the same terms and conditions as required herein for obtaining the original Franchise, except those which are by their terms expressly inapplicable or which are waived by the Council,

SECTION 9. USES PERMITTED UNDER FRANCHISE

(a) Any Franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the Grantee to engage in the business of constructing, operating, and providing a CATV system in the City of Lodi and, for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street, where City's interest therein will support the grant, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, devices, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations, including but not limited to any public utility or other person permitted to do business in the City.

(b) The granting of a Franchise pursuant to this Ordinance shall not be construed as permission **or** authority to enter on, occupy **or** otherwise utilize private property without the express consent of the owner **or** agent in possession thereof. No Franchise granted hereunder shall be construed as a permit **or** authority to transmit any special program **or** event for which a ~~separate~~ and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television" **or** "pay TV" and no Grantee shall directly **or** indirectly install, maintain, **or** operate on any television set, FM radio, **or** other receiver, a coin **box or** any other device **or** means **for** the collection of money for individual programs.

SECTION 10. DURATION, TERMS, AND FORFEITURE OF FRANCHISE

No Franchise granted by the Board shall be for a term longer than twenty (20) years following the date of acceptance of such Franchise by the Grantee **or** the renewal thereof except that a Franchise may be renewed **for** successive terms, not to exceed twenty (20) years each, if such renewal **or** renewals are approved **in** writing by the Council and the Grantee prior to the expiration **of** the term of the Franchise., Any neglect, failure, **or** refusal **of** a Grantee to substantially comply with any of the material terms **or** conditions of this Ordinance continuing **for more** than sixty (60) days following written notice thereof from the City shall ~~work~~ a forfeiture thereof in addition to the other penalties and rights provided in this Ordinance; and the Council may thereupon declare the Franchise ~~forfeited~~ and may exclude the Grantee from further use **or** acts thereunder, and thereupon the Grantee shall be deemed to have immediately and automatically surrendered all rights hereunder. The Grantee shall remove **its** equipment **from** the streets within the Franchise Area within sixty (60) days after receipt **of** notice **of** the Council's declaration that ~~his~~ Franchise has been forfeited. Notice for the purpose of this Section shall be in writing and deposited in the United States ~~mail~~, postage prepaid as certified or registered mail, addressed to the Grantee at its address last filed with the Council.

SECTION 11. FRANCHISE PAYMENT.

Any grantee granted a Franchise under this Ordinance shall pay to the City, during the life of such Franchise, a minimum sum equal to at least 3% and a maximum sum of at least 7% of the monthly gross receipts of the grantee. Such payment herein provided for shall be in lieu of any occupation tax, license, tax, or similar levy, and shall be paid quarterly or as directed by the City.

SECTION 12. FINANCIAL STATEMENT AND INSPECTION.

The Grantee shall file with the Council within ninety (90) days after the expiration of any fiscal year or portion thereof during which a Franchise is in force a financial statement prepared by a certified public accountant or public accountant showing in detail gross annual receipts, as defined herein, of Grantee during the preceding calendar year or portion thereof. It shall be the duty of the Grantee to pay to the City within fifteen (15) days after the time for filing such statements the sum prescribed by the Franchise, or any unpaid balance thereof, for the calendar year or the portion thereof covered by the Statement. The right is reserved to the City of audit and recomputation of any and all amounts paid under this Ordinance and acceptance until expiration of a period of five (5) years following payment shall not be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance or for the performance of any other obligations thereunder. In any year, commencing With the first full calendar year of service during which the Franchise payments amount to less than TWELVE HUNDRED DOLLARS AND NO/100 (\$1200.00), Grantee shall pay to the City for such a year a minimum total amount of TWELVE HUNDRED DOLLARS AND NO/100 (\$1200.00). In the event of any holding over-after expiration or any other termination of a Franchise issued hereunder, whether with or without the consent of the City, Grantee shall pay to City as compensation twice the percent of its gross annual receipts during said period

as it would be required ~~to~~ pay under its Franchise ~~if~~ there were no holding over.

SECTION 13. RATES.

(a) The Grantee may make a charge to subscribers for installation and connection to its CATV system and a fixed monthly charge all as filed and approved as herein provided and as provided in the resolution granting the Franchise.

(b) ~~No~~ increase ~~in~~ the rates and charges (excluding the imposition of any federal, state, ~~or~~ local taxes) ~~to~~ subscribers, as set forth in the schedule filed and approved with Grantee's application, ~~may~~ be made without the prior approval of ~~the~~ Council expressed by resolution. If a Grantee desires ~~to~~ make application for ~~an~~ increase ~~in~~ rates and charges, the Grantee shall file a written application with the Council setting forth the proposals ~~of~~ Grantee and the Council shall finally act upon said application within one hundred twenty (120) days. If the Council fails to finally act on said application within one hundred twenty (120) days after filing, the application ~~shall~~ automatically be deemed denied unless the time for action is extended by mutual written agreement between the Council and the Grantee,

(c) A Grantee shall not file ~~an~~ application for an increase ~~in~~ rates and charges until twelve (12) ~~months~~ have expired from the time Grantee is first granted a Franchise,

(d) A Grantee shall not ~~file~~ more than one application for an increase in rates and charges during any calendar year.

(e) ~~For~~ unusual circumstances, such as underground cable required, ~~or~~ more ~~than~~ one hundred fifty (150) feet ~~of~~ distance from cable to connection of service to subscribers, an additional installation charge over ~~that~~ normally charged ~~for~~ installation ~~as specified~~ in the applicant's proposal may be charged, with easements, if required, ~~to~~ be supplied by subscribers.

(f) For remote, relatively inaccessible subscribers within the Franchise Area the installation of service may be made on the basis ~~of~~

cost of materials, labor and easements, and special charges may be established for service.

SECTION 14. FRANCHISE LIMITATIONS.

- (a) Any Franchise granted under this Ordinance shall be non-exclusive.
- (b) No privilege or exemption shall be authorized or conferred by any Franchise granted under this Ordinance except those specifically prescribed in this Ordinance.
- (c) Any privilege claimed under a Franchise by the Grantee in any street, or other public property, shall be subordinate to any prior occupancy thereof for public purposes.
- (d) A Franchise granted hereunder shall be a privilege to be held in personal trust by the original Grantee. It cannot be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by forced or involuntary sale, bankruptcy, sale, merger, consolidation, or otherwise, without prior consent of the Council expressed in writing, and under such conditions as may be therein prescribed. The Grantee shall file with the Council within thirty (30) days prior to sale, transfer, assignment, or lease of the Franchise or any part thereof or any rights or privileges granted thereby, written evidence of the proposed transaction certified to by the Grantee or its duly authorized officers. Any proposed assignee must show financial responsibility and must agree to comply with all of the provisions of this Ordinance; and provided further that no consent or approval shall be required for a transfer in trust, by mortgage, by security agreement, or by other hypothecation as a whole, to secure an indebtedness, or for a transfer required by operation of law.
- (e) Any right or power in, or duty impressed upon any officer, employee, department, or board of the City shall be subject to transfer by the Council or by law to any other officer, employee, department or board of the City,
- (f) The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage, arising out of any provisions or requirements of this Ordinance or its enforcement.

(g) Any Franchise granted pursuant to this Ordinance shall be subject to all provisions, rules, regulations, and conditions prescribed by federal, state, county and local law heretofore ~~or~~ hereafter enacted ~~or~~ established during the term of any Franchise granted hereunder, except that nothing herein shall be ~~so~~ interpreted ~~as~~ to cause this Ordinance, ~~or~~ any Franchise granted pursuant to it, to be inapplicable ~~or~~ inoperative as a result of the laws of another governmental agency ~~or~~ agencies.

(h) Any Franchise granted hereunder ~~shall~~ not relieve the Grantee ~~of~~ any obligation involved in obtaining pole space from any department ~~or~~ division of the City, other agency of government, utility company, ~~or~~ from others maintaining poles in streets, provided the latter shall cooperate with Grantee to the end that only one set of poles shall be required by all.

(i) Any Franchise granted under this Ordinance is in lieu ~~of~~ any and all ~~other~~ rights, privileges, ~~powers~~, immunities, and authorities owned, possessed, controlled, ~~or~~ exercisable by Grantee, or any successor to any interest of Grantee, of ~~or~~ pertaining to the construction, operation, or maintenance of any CATV system in the incorporated limits of the City, and the acceptance of a Franchise hereunder ~~shall~~. operate as between Grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the City, to the effect that, as between Grantee and the City, any and all construction, operation and maintenance by any Grantee ~~of~~ any CATV system in the City shall be, and shall be deemed and construed in ~~all~~ instances and respects to be, under and pursuant to said Franchise, and not under ~~or~~ pursuant to any other right, privilege, power, ~~immunity~~, ~~or~~ authority whatsoever.

SECTION 15. RIGHTS RESERVED BY CITY.

(a) Nothing in this Ordinance shall in any way ~~or~~ to any extent impair ~~or~~ affect the right of the City to acquire Grantee's property either by purchase ~~or~~ through exercise ~~of~~ the right of eminent domain,

and nothing herein shall be construed to contract away or to modify or abridge the City's right of eminent domain in respect to any Grantee,

(b) No Franchise granted under this Ordinance shall be given any value before any Court or other public authority in any action or proceeding brought by the City in excess of the amount of the required filing fee and any other sum paid by Grantee to City for a Franchise at the time of granting.

(c) There is hereby reserved to City every right and power which is required to be herein reserved or provided by any Ordinance or resolution of the City, and the Grantee, by its acceptance of any Franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.

(d) The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under this Ordinance.

(e) Neither the granting of any Franchise hereunder nor any of the provisions contained herein shall be construed to prevent the City from granting any identical, or similar, Franchise to any other person within all or any portion of the City.

(f) There is hereby reserved to City the right to amend any section or part of this Ordinance so as to require reasonable additional or greater standards of construction, operation, maintenance, or otherwise, on the part of the Grantee.

(g) Neither the granting of any Franchise nor any provision herein shall constitute a bar to the exercise of any governmental right or power of City.

(h) All facilities of any grantee licensed hereunder within the City shall be available for Civil Defense purposes at such times as the City Director of Civil Defense shall require.

SECTION 16. DISPUTES, CITY MANAGER.

(a) The City Manager is hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the

operations of any Grantee under this Ordinance, either on behalf of the City, the Grantee, or any subscriber in the best interest of the public.

(b) Either the Grantee or any member of the public who may be dissatisfied with the decision of the City Manager may appeal the matter to the Council for hearing and determination.

(c) The Council may accept, reject, or modify the decision of the City Manager and the Council may adjust, settle, or compromise any controversy or cancel any charge arising from the operations of any Grantee or from any provision of this Ordinance.

SECTION 17. PERMITS, INSTALLATIONS, AND SERVICE

(a) Upon acceptance of any Franchise, the Grantee shall immediately initiate action to obtain all permits, licenses, easements, variances, and any other authorizations which are required or necessary in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, any authorizations required to import distant signals, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having or asserting jurisdiction over the operation of the CATV system, any associated microwave transmission facilities, or any other associated facility, and Grantee shall proceed With due diligence until all such matters are obtained.

Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to its Franchise, shall also be submitted simultaneously to the City by the Grantee.

(b) Within ninety (90) days after obtaining all the required or necessary permits, licenses, easements, variances, and any other authorizations referred to in paragraph (a) of this section, Grantee shall commence construction and installation of the CATV system.

(c) Within six (6) months after the permits are granted for a particular area Grantee shall proceed to render initial service to subscribers, and the completion of construction and installation shall be pursued with reasonable diligence, not to exceed fifteen (15) months from the date of the granting of the permits for the particular area to be served.

(d) Failure to do any of the foregoing within the time specified except as provided in paragraph (e) of this section shall be grounds for termination of the Franchise.

(e) The Council may in its discretion extend the time for Grantee, acting in good faith, to do any act required hereunder. The time for commencement of construction and installation, or the rendering of service to subscribers, initially or thereafter, shall be extended or excused, as the case may be, for any period during which Grantee experiences delay or interruptions due to any of the following circumstances if reasonably beyond its control: necessary utility changes or rearrangements, governmental or regulatory restrictions or requirements, labor strikes, lock outs, war (declared or undeclared), national emergency, fire, earthquake, the elements, and acts of God.

SECTION 18. LOCATIONS, CONSTRUCTION, AND UNDERGROUNDING.

(a) Any poles, wires, cable lines, conduits or other properties of the Grantee shall be constructed or installed in streets in accordance with good engineering practice at such locations and in such manner as is approved by the Director of Public Works and shall conform to all applicable codes and laws.

(b) The Grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City except those installed or erected upon existing or future public utility facilities, without obtaining the prior written approval of the Director of Public Works and the owner-subdivider.

(c) In those areas and portions of the City where the transmission and distribution facilities of both the public utility providing telephone service and those of the utility providing electric service have been or are to be placed underground, then the Grantee, upon written request by the Director of Public Works so to do, shall likewise initially construct, install, operate and maintain its transmission and distribution facilities underground. For the purposes of this subsection, "underground" shall include a partial underground system. Amplifiers in Grantee's transmission and distribution lines may be in appropriate housing as approved by the Director of Public Works. The City shall not in any manner be responsible for any costs incurred by any Grantee in placing his property underground.

SECTION 19. REMOVAL AND ABANDONMENT OF PROPERTY OF GRANTEE.

(a) In the event that the use of any part of the CATV system is discontinued for any reason for a continuous period of six (6) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the Franchise has been terminated, cancelled or has expired, the Grantee shall promptly, upon being given ten (10) days' written notice, remove from the streets or public places all such property and poles of such system other than any which the Director of Public Works may permit to be abandoned in place. In the event of such removal, the Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the Director of Public Works.

(b) Any property of the Grantee remaining in place sixty (60) days after the termination, forfeiture or expiration of the Franchise shall be considered permanently abandoned. The Director of Public Works may extend such time.

(c) Any property of the Grantee to be abandoned in place shall be abandoned in such a manner as the Director of Public Works shall prescribe.

Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the Grantee in place, the property shall become that of the **City** and the Grantee shall submit to the Director of Public **Works** an instrument in writing, to be approved by the City Attorney, transferring to the City, the ownership of such property ■

SECTION 20. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS.

The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the ~~same~~ street ~~or~~ other public place, ~~or~~ remove from the street ~~or~~ other public place, any property of the Grantee when required by the Director of Public **Works** by reason of traffic conditions, public safety, street vacation, freeway and street construction, change ~~or~~ establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks ~~or~~ any other type of structures ~~or~~ improvements by public agencies; provided, however, that the Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the Grantee in place, as provided in this Ordinance,

SECTION 21. FAILURE TO PERFORM STREET WORK.

Upon failure of the Grantee to commence, pursue, ~~or~~ complete any work required by law ~~or~~ by the provisions of this Ordinance ~~or~~ by its Franchise to be done in any street ~~or~~ other public place, within the time prescribed, and to the satisfaction of the Director of Public **Works**, the Director of Public **Works** may, at his option, cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the Director of Public **Works** to the Grantee within thirty (30) days after receipt of **such** itemized report.

SECTION 22. FAITHFUL PERFORMANCE BOND.

The Grantee shall, concurrently with the filing of an acceptance of award under any Franchise granted under this Ordinance, file with the City Clerk and shall at all times thereafter maintain in full force

and effect for the term of a Franchise or any renewal thereof, at Grantee's sole expense, a corporate surety bond in a company and in a form approved by the City Attorney, in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000), renewable annually, and conditioned upon the faithful performance of Grantee, and upon the further condition that in the event Grantee shall fail to comply with any one or more of the provisions of this Ordinance, or of any Franchise issued to the Grantee hereunder, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee as prescribed hereby which may be in default, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond; said condition to be a continuing obligation for the duration of such Franchise and any renewal thereof and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of said Franchise or renewal by the Grantee or from its exercise of any privilege therein granted. The bond shall provide that thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the City Manager. Neither the provisions of this Section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under any Franchise issued hereunder or for damages, either to the full amount of the bond or otherwise. The Council may at any time waive or reduce the amount of the bond provided for by this section.

SECTION 23, INDEMNIFICATION OF CITY.

(a) The Grantee shall indemnify the City, its officers, and its employees against all claims, demands, actions, suits, and proceedings by others, against all liability to others, and against any loss, cost,

and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment of its Franchise irrespective of the amount of the comprehensive liability insurance policy required hereunder,

(b) The Grantee shall at all times during the existence of any Franchise issued hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the City, its officers, boards, commissions, agents and employees, in a company approved by the City Attorney and in a form satisfactory to the City Attorney, protecting the City and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Grantee under such a Franchise, and for property damage, in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for personal injury or death of any one person and THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for the.. personal injury or death of two or more persons in any one occurrence and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for damage to property resulting from any one occurrence. A copy of such policy or policies, or certificates of insurance showing the existence of such insurance coverage, shall be filed by the Grantee with the Council,

(c) The policies mentioned in the foregoing paragraph shall name the City, its officers, boards, commissions, agents, and employees, as additional insureds, shall contain a contractual liability endorsement approved by the City Attorney and shall contain a provision that a written notice of any cancellation or reduction in coverage of said policies shall be delivered to the City Manager thirty (30) days in advance of the effective date thereof,

SECTION 24. INSPECTION OF PROPERTY AND RECORDS

(a) At all reasonable times, the Grantee shall permit any duly authorized representative of the City to examine all property of the Grantee, together with any appurtenant property of the Grantee situated

within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control which deal with the operations, affairs, transactions, or property of the Grantee in relation to its Franchise. If any maps or records are not kept in the City, and upon reasonable request the same are not made available in the City, and if the Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the Grantee,

(b) The Grantee shall prepare and furnish to the Director of Public Works and the City Manager at the times and in the form prescribed by either of said officers, such reports with respect to its operations, affairs, transactions or property, as may be reasonable, necessary, or appropriate to the performance of any of the rights, functions, or duties of the City or any of its officers in connection with the Franchise,

(c) The Grantee shall at all times make and keep in the City full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the City.

(d) When any portion of the CATV system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the Director of Public Works.

SECTION 25. OPERATIONAL STANDARDS.

The CATV system shall be installed and maintained in accordance with the highest and best accepted standards of the industry to the end that subscribers shall receive the best possible service. In determining the satisfactory extent of such standards the following factors shall be given consideration:

(a) The system shall be capable of producing a picture, whether in black or white or in color, that is undistorted, free from ghost

images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows.

(b) That the system be installed using all band equipment capable of passing the entire VHF and FM spectrum, and that it have the further capability of converting UHF for distribution to subscribers on the VHF band.

(c) That the system, as installed, be capable of passing standard color TV signals without the introduction of material degradation of color fidelity and intelligence.

(d) That the system and all equipment be designed and rated for 24-hour per day continuous operation.

(e) All programs of broadcasting stations carried by the Grantee shall be carried in entirety as received without additions or deletions, except as expressly required or authorized by law.

(f) That the system provide a nominal signal level of 2,000 micro volts over a 75 Ohms load at the input terminals of each TV receiver.

(g) That the hum modulation of the picture signal is less than 5%.

(h) That the signal-to-noise ratio be not less than 40 decibels.

(i) That the system use components having VSWR of 1.4 or less.

The Council may from time to time establish and revise technical standards to be applicable to CATV, consistent with the accepted standards of the industry, but such establishment or revision shall be done only after a public hearing on such standards and all Grantees shall be given written notice of such hearing and any proposed standards at least thirty (30) days prior to such hearing.

SECTION 26. FILING.

All matters herein provided to be filed with the City, unless provided otherwise herein, shall be filed with the City Manager.

SECTION 27. OFFICE IN CITY.

The Grantee shall maintain an office within the City of Lodi and

a telephone connection which subscribers may call without incurring special message or toll charges so that CATV maintenance service shall be easily available to subscribers,

SECTION 28, SERVICE TO SUBSCRIBERS.

Subject to Section 13, no person or entity in the existing service area of the Grantee shall be arbitrarily refused service; provided, however, that the Grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge or any other charges as provided by this Ordinance or any resolution granting the Franchise-

SECTION 29, SUBSCRIBER CONTRACT AND RATES AND CHARGES

Before Grantee shall provide antenna service to any subscriber, Grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

Subscriber understands that in providing antenna service (Grantee) is making use of public rights of way within the City of Lodi and that the continued use of these public rights of way is in no way guaranteed. In the event the continued use of such rights of way is denied to (Grantee) for any reason, (Grantee) will make every reasonable effort to provide service over alternate routes. Subscriber agrees he will make no claim nor undertake any action against the City of Lodi, its officers, its employees, or (Grantee) if the service to be provided by (Grantee) hereunder is interrupted or discontinued because the continued use of such rights of way is denied to (Grantee) for any reason.

The form of Grantee's contract with its subscribers shall be subject to approval of the Council with respect to the installation of this provision,

SECTION 30. SALE OF TELEVISION RECEIVERS.

The Grantee or any of its employees during their course of employment shall not engage in the business of selling or leasing television ~~or~~ other receivers which make any use of signals transmitted by its system, nor shall the Grantee or any of its employees during the course of their employment engage in the repair of such receivers or the sale of parts for the same. This restriction shall not apply to a convertor that increases the capacity of the system that may be sold or leased by Grantee to a subscriber.

SECTION 31. FREE SERVICE.

The Grantee shall provide free of charge a service drop ~~for~~ CATV service for all public and non-profit private schools, City police and fire stations, City recreation centers, church recreation rooms, and any additional municipal buildings designated by the City Council, provided that such locations are passed by transmission cable maintained for the service of paying subscribers. If the service drop exceeds 150 feet, Grantee may charge for the excess footage on the basis of time and materials.

SECTION 32. MOVING OF BUILDINGS.

The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise ~~or~~ lower its wires to permit the moving of buildings. The expense of such temporary removal ~~or~~ raising ~~or~~ lowering of wires shall be paid by the Grantee. The Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

SECTION 33. UNAUTHORIZED CONNECTIONS AND TAMPERING AND PENALTY THEREFOR. .

(a) It shall ~~be~~ unlawful for any person, firm, ~~or~~ corporation to make any unauthorized connection, whether physically, acoustically, inductively, electronically, or otherwise, with any part of a Franchised CATV system within the City for the purpose of taking ~~or~~ receiving television signals, radio signals, pictures, programs, sound or electronic impulses of any kind for the purpose of enabling himself ~~or~~ others to

receive any such television signal, radio signal, picture, program, sound, **or** electronic impulses.

(b) **It** shall be unlawful for any person, without the consent of Grantee, to wilfully tamper with, remove, obstruct, **or** injure any cables, wires, devices, **or** equipment used for the distribution of television signals, radio signals, pictures, programs, sound, **or** electronic impulses of any kind.

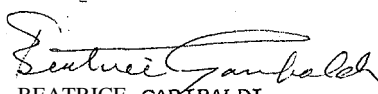
SECTION 34. SEVERABILITY.

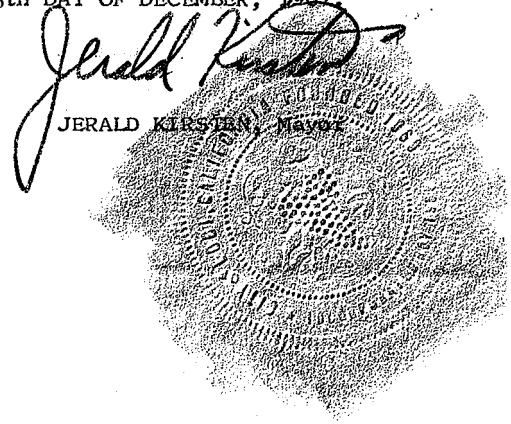
If any section, subsection, subdivision, paragraph, sentence, clause, **or** phrase of this Ordinance **or** any part thereof is for any reason held to be unconstitutional **or** invalid, such decision shall not affect the validity of the remaining portions of this Ordinance **or** any part thereof. The Council hereby declares that **it** would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional **or** invalid.

SECTION 35. EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days after its passage and, prior to the expiration of fifteen (15) days from the passage thereof, shall be published once in the Lodi News-Sentinel, a newspaper published in the City of Lodi, State **of** California.

APPROVED THIS 6th DAY OF DECEMBER, 1967.


ATTEST: BEATRICE GARIBALDI
City Clerk



State of California,

County of San Joaquin, ss.

I, Beatrice Garibaldi, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 855 was introduced at a regular meeting of the City Council of said City held November 15, 1967, and was thereafter passed, adopted, and ordered to print at a regular meeting held December 6, 1967, by the following vote:

Ayes: Councilmen Brown, Culbertson, Hunnell, Walton and Kirsten

Noes: None

Absent: None

I further certify that Ordinance No. 855 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


City Clerk